

### **REMARKS/ARGUMENTS**

Claims 1-17 and 21-52 were pending at the time of the mailing of the outstanding Office Action. Claims 1-6, 8, 14-17, 21-34, 41, 51, and 52 are under consideration and claims 7, 9-13, 35-40 and 42-50 are withdrawn from consideration. By this response, claims 1-6 are amended. Withdrawn claims 7 and 9 are also amended. No claims have been added or cancelled.

In the Office Action of 28 June 2006, the Examiner rejected claims 2-6, 8, 21-34 and 41 under 35 U.S.C. § 112, second paragraph, as being indefinite for failure to point out and distinctly claim the subject matter of the invention. The Examiner rejected claims 1, 2, 5, 6, 25 and 30 under 35 U.S.C. § 102(b) as anticipated by, or in the alternative, under 35 U.S.C. § 103(a) as obvious over US Pat. No. 5,556,414 to Turi (hereinafter "Turi"). The Examiner rejected claims 4, 8, 22, 23, 27, 29, 32, 34, and 41 under 35 U.S.C. § 103(a) as being unpatentable over Turi. Claims 3, 21, 24, 26, 28, 31, and 33 were rejected under 35 U.S.C. § 103(a) as obvious over Turi in view of US Pat. Pub. No. 2003/0208279 to Atala (hereinafter "Atala"). Claims 14-17 and 51-52 were rejected under 35 U.S.C. § 103(a) as unpatentable over Turi in view of US Pat. No. 5,680,873 to Berg (hereinafter "Berg").

Claims 2-6 have been amended to recite "a first wall portion" rather than "the first wall portion." Claims 8, 21-34 and 41 depend, either directly or indirectly, on claims 2-6 and therefore the phrase "the first wall portion," has proper antecedent basis. Withdrawal of the rejection under 35 U.S.C. § 112, second paragraph is respectfully requested.

The Examiner maintains that Turi discloses a stent for a vessel comprising a tubular body for expansion from a first condition to a second condition, the stent being configured such that a first part of a stent is disposed inwardly relative to a second part of the stent and wherein in the second condition, at least a portion of the first part changes its position relative to the second part such that the at least portion of the first part is not disposed inwardly relative to the second part of the stent wherein the tubular body includes at least a first wall portion comprising human or animal tissue of adequate

elasticity. The Applicants have amended claim 1 to further distinguish the present invention from Turi. Claim 1 now recites that the stent consists essentially of human or animal tissue. Support for this amendment may be found in paragraphs 0013-0016, which indicate that the first wall portion, of human or animal tissue, is combined with wall portions which also comprise a suitable human or animal tissue and that the stent may be produced from body-specific material of the patient to be treated, so that immune responses to the stent are prevented. Additional support may be found in paragraphs 0044-0045. Further support may be found in the Figures 1, 2, 4a, 4b, and 5 which all disclose a stent whose tubular body is unitary in nature.

Claim 1 patentably distinguishes over Turi because Turi does not teach or suggest a stent that consists essentially of human or animal tissue. Turi teaches a, "composite intraluminal graft" (see Turi, Abstract, and column 6, line 52 - column 7, line 8). For any structure to be described as a "composite," it must be made of distinct components. Therefore, claim 1 patentably distinguishes over Turi which does not teach or suggest a stent having a tubular body consisting essentially of human or animal tissue. Withdrawal of the rejection of claim 1 is respectfully requested.

Claim 1 likewise patentably distinguishes over Atala and Berg. Atala provides a stent in which the stent is merely expanded from a first condition to a second condition with no change in the relative position of a first and a second part of the stent. Berg simply provides a guide catheter. Neither reference teaches or suggests a stent as claimed.

As stated in previous responses to Office Actions, claims 2-6, 8, 14-17, 21-34, 41, 51, and 52 provide additional distinctions not taught or suggested in the prior art. The Applicants continue to object to the Examiner's characterization of a hardening agent as recited in claims 6 and 30. The Examiner continues to assert that the use of a hardening agent is anticipated by the adhesive of Turi. The Applicants, however, are entitled to be their own lexicographers and have adequately described a hardening agent in such a way as to preclude the Examiner's interpretation of this term. As stated previously, while an adhesive can harden as it cures or dries, such a composition would be more properly characterized as a *hardenable* agent (i.e., the agent itself becomes hard) than as a *hardening* agent (i.e., an agent that acts to cause or influence another component to

harden). This distinction is clearly described in the specification, where the use of a hardening agent is described in paragraphs 0021–0026, as causing the hardening of the tissue of the stent. In contradistinction, the use of an adhesive is described in paragraphs 0027-0033, which clearly indicates that the adhesive itself is hardened. Each of claims 6 and 30 depend from claims which recite the presence of hardenable tissue. It is further maintained that the recitation of the presence of hardening agents or components thereof in claims, 6, 8, 30 – 34 and 41 is consistent with the transitional phrase “consisting essentially of” in claim 1, because these components do not affect the basic characteristics of the invention as recited in claim 1.

Because the cited prior art does not teach or suggest all of the limitations of claims 1-6, 8, 14-17, 21-34, 41, 51, and 52, withdrawal of the rejections of these claims under 35 U.S.C. § 102(b) and 35 U.S.C. § 103(a) is respectfully requested.

Because the amendments presented herein place the claims under consideration in condition for allowance, entry of this Amendment after Final Rejection is appropriate. The Applicants maintain that generic claims 1-6, 8, 14-17, 21-34, 41, 51, and 52 patentably distinguish over the cited prior art, and therefore request rejoinder of the non-elected claims of group I, claims 7, 9-13, 35-40 and 42-50. None of the amendments presented herein will necessitate an additional search. In the event that the Examiner disagrees with the Applicants regarding the allowability of the pending claims, entry of the Amendment should still be made on the grounds that amendment of claims 1-6 simplifies matters under consideration for appeal. The issuance of a Notice of Allowance for claims 1-17 and 21-52 is respectfully solicited.

The outstanding Office action was mailed on 28 June 2006. The Examiner set a shortened statutory period for reply of 3 months from the mailing date. Therefore, no petition for an extension of time is believed to be required with the filing of this response. Nevertheless, the Applicants hereby make a conditional petition for an extension of time for response in the event that such a petition is required. No fees are believed to be due with this response. However, in the event that a fee for the filing of this response is insufficient, the Commissioner is authorized to charge any fee deficiency or to credit any overpayment to Deposit Account 15-0450.

Respectfully submitted,

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